IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 327 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LILABEN DHIRAJLAL JAIN - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MAULIK J SHELAT for Applicant(s) : 1,
Mr.Pradip D. Bhate, APP for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 30/03/2006

CAV JUDGMENT

1. Rule. Learned A.P.P. Mr. Pradip D.Bhate waives service of rule on behalf of the respondent-State.

2. With the consent of the learned Counsel for the respective parties, the application is heard finally.

3. This Special Criminal Application is filed by the present petitioner with a prayer to quash and set aside the order dated 9-11-2005 passed by the learned Metropolitan Magistrate Court no.20, Ahmedabad in Misc. Application no.334 of 2005 refusing to grant interim custody of the muddamal gold-silver to the petitioner and order dated 16-12-2005 passed by the learned Additional City Sessions Judge, Court no.16, Ahmedabad in Criminal Revision Application no.256 of 2005 confirming the said order of the learned Magistrate.

4. Relevant facts lie within a short compass. After the death of her husband, the petitioner

alongwith her son and daughter was running the gold-silver jewellery shop which was earlier run by her husband. It is the case of the petitioner that on 6-6-2005 theft had taken place and they were robbed of gold-silver jewellery worth Rs.77,090/- as well as an iron safe. An F.I.R came to be lodged by the son of the petitioner bearing C.R. no.213 of 2005 and a case under Sections 457 and 380 of the Indian Penal Code was registered at Odhav Police Station on 14-9-2005. Upon investigation, the accused was arrested by the police on 22-8-05 and the Muddamal gold-silver jewellery had been recovered by the police and is in police custody at present.

5. The present petitioner filed an application being Misc.Application no.334 of 2005 before the learned Metropolitan Magistrate, Ahmedabad, for interim custody of the gold-silver jewellery which was of the ownership of the petitioner

under Section 451 of the Criminal Procedure Code. The learned Magistrate handed over custody of the iron safe to the petitioner, however, the learned Magistrate rejected the application with regard to custody of the gold-silver jewellery on the ground that the same are required for the purpose of identification at the time of trial and that the ownership rights are yet to be decided.

6. Being aggrieved by the said order of the Magistrate, the petitioner then preferred Revision Application no.256 of 2005 before the Additional City Sessions Judge, Ahmedabad for return of the muddamal gold-silver jewellery seized during investigation of the above referred F.I.R. And the learned Sessions Judge passed order dated 16-12-2005 whereby the order passed by the learned Magistrate came to be confirmed. These two orders are the subject matter of challenge in the present Special Criminal

Application.

7. Learned Counsel Mr. M.J.Shelet for the petitioner submitted that once it is established from the record that the gold-silver jewellery belongs to the petitioner at whose house the theft had taken place, the petitioner is the best person to whom the interim custody of the seized ornaments should be handed over. In support of his submission he has relied on the judgment rendered by the Honourable Supreme Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat reported in 2003(1) G.L.H. 307**, wherein it has been observed that if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant on certain conditions.

8. The learned A.P.P. on the other hand while supporting the orders passed by the trial Court submitted that the ownership rights are yet to be decided and the muddamal articles should be retained in custody of police so that it can be made available for identification in its original condition at the time of trial.

9. I have considered and weighed the respective submissions advanced by the rival sides and also perused the material on record. It is an admitted position that the theft in question had taken place at the house of the petitioner and the iron safe which was also stolen alongwith the gold-silver jewellery was also returned to the petitioner by the learned Magistrate, I do not think that any useful purpose would be served by retaining the golden-silver jewellery in police custody for years till the trial is over. The learned Magistrate ought to have handed over the

custody of the seized ornaments to the petitioner after preparing detailed proper panchnama of such articles, taking photographs, bond and also proper security. This is so, in view of the ratio laid down by the Apex Court in Sunderlal”s case Supra.

10. In view of my aforesaid conclusions, the application is allowed. The impugned order dated 9-11-2005 passed by the learned Metropolitan Magistrate, Ahmedabad in Mis.Application no.344 of 2005 as also the order dated 16-12-2005 passed by the learned Additional City Sessions Judge, Ahmedabad in Criminal Revision Application no.256 of 2005 confirming the order of the learned Magistrate are hereby quashed and set aside. It is directed that the Muddamal articles i.e. Golden-silver jewellery seized in the crime in question be handed over to the present petitioner on condition that she shall maintain the same in

its original condition and shall produce the same before the trial Court as and when so directed. Prior to handing over custody of the said Muddamal articles, the learned Magistrate shall get a detailed proper panchnama prepared of such articles, take photographs of such articles which should be attested or countersigned by the complainant, the accused as well as by the petitioner, take a bond and proper security so as to prevent the evidence be lost, altered or destroyed. Rule is made absolute accordingly. Direct service is permitted.

(M.D.Shh,J.)

mds-lee.